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### Information Note

#### U.S. Countervailing duties : expiry of statutory "waiver".

##### Background

1. The U.S. Trade Act of 1974, which provides authority for the U.S. Administration to negotiate the GATT Tokyo Round, gives power to the American Treasury to "waive", in certain circumstances, the application of countervailing duties on imports into the United States. "Countervailing duties" are duties applied to counteract the effect of foreign "subsidies" which in American practice are held to cover exports subsidies, export refunds and even domestic subsidies to producers. Although the existing GATT (Article VI) requires that countervailing duties against subsidies should only be applied where they cause "material injury" to producers in importing countries, American law only requires an "injury" test for those goods which are duty-free on import into the U.S. It is a major Community objective of the Tokyo Round to ensure that a meaningful "injury" test is adopted into U.S. law in order to prevent application of countervailing duties contrary to existing GATT provisions. The U.S. waiver was needed to avoid confrontation on this issue while negotiations took place on GATT subsidies/countervailing duties rules.
2. The "waiver" is narrowly circumscribed and time-limited (see attachment "A"). The effect of this provision appears to be that countervailing duties automatically become imposable on 4 January on goods in respect of which the waiver has been exercised. The intention of the Congress was clearly to provide an "incentive" to the negotiation of a GATT subsidies code, covering, among other things, the CAP export refund arrangements.
3. The products and origins of goods imported into the United States in respect of which the waiver authority has been exercised by the U.S. Treasury are set out at attachment "B". For the Community, approximately 400 million dollars of trade is involved.

##### The problem

4. The timetable for concluding the Tokyo Round, as agreed in Geneva and confirmed at the Bonn Summit in July, calls for a negotiated package covering both tariff and non-tariff matters, to be ready on 15 December. This internationally agreed timetable means that the earliest date at which the results of the negotiations - including the "injury" test for application of countervailing duties - could be adopted into U.S. law is the Spring of 1979, whereas the waiver authority expires on 3rd January, 1979. What is needed is action by the U.S. to remove this threat pending the conclusion and implementation of the Tokyo Round negotiations. The imposition of countervailing duties on

Community exports on 4 January without an "injury" test as required under the GATT would inflict grave damage on exporters to the U.S., would lead to strong pressure for retaliation, and would be capable of unleashing a trade war of considerable dimensions. Above all, in the absence of any assurance that the waiver will be extended to take account of the internationally agreed timetable, it would be unacceptable for the Community to conclude the Tokyo Round negotiations.

5. The U.S. Administration has been repeatedly alerted by the Commission to the potential dangers of the arbitrary statutory time limit on the waiver and in the more recent exchanges on this matter the implications of the negotiating timetable have been stressed. The Administration is not unsympathetic to the idea of a temporary prolongation of waiver authority but fears that the Congress would either find it unacceptable or attach to the legislation a Christmas tree protectionist amendment.

#### The present position

6. The United States Administration and the Commission share the conviction that the present Tokyo-Round negotiating timetable must be adhered to. However, a major road block exists in the waiver time limit established by the US Trade Act. Only the Administration can judge how the problem can best be solved. It is understood that, as a result of the Commission's representations, the Administration is again considering the possibility of a legislative extension of the waiver and is consulting Congressional leaders. Failure to find a solution would gravely upset the critical final stages of the Tokyo Round negotiations and would mean setting the world on a protectionist course - a choice which the last two Western Economic Summits have firmly rejected.

EXTRACT FROM SECTION 331 OF THE TRADE ACT OF 1974

(ENACTED 3RD JANUARY, 1975) AMENDING SECTION 303 OF THE TARIFF ACT OF 1930

"Temporary Provision While Negotiations are in Process -

-(1) It is the sense of the Congress that the President, to the extent, practicable and consistent with United States interests, seek through negotiations the establishment of internationally agreed rules and procedures governing the use of subsidies (and other export incentives) and the application of countervailing duties.

"(2) If, after seeking information and advice from such agencies as he may deem appropriate, the Secretary of the Treasury determines, at any time during the four-year period beginning on the date of the enactment of the Trade Act of 1974, that -

"(A) adequate steps have been taken to reduce substantially or eliminate during such period the adverse effect of a bounty or grant which he has determined is being paid or bestowed with respect to any article or merchandise;

"(B) there is a reasonable prospect that, under section 102 of the Trade Act of 1974, successful trade agreements will be entered into with foreign countries or instrumentalities providing for the reduction or elimination of barriers to or other distortions of international trade; and

"(C) the imposition of the additional duty under this section with respect to such article or merchandise would be likely to seriously jeopardise the satisfactory completion of such negotiations;

the imposition of the additional duty under this section with respect to such article or merchandise shall not be required during the remainder of such four-year period.

Attachment B.

IMPORTS INTO THE USA IN RESPECT OF WHICH THE WAIVER HAS BEEN EXERCISED

COUNTRY	PRODUCT	TRADE INVOLVED
EEC	dairy products	dollars 130 mill. (1974)
EEC	canned hams	231 mill. (1974)
		258.2 mill. (1976)
KOREA	footwear, rubber	82.1 mill. (1974)
MEXICO	steel, carbon and high strength plates	0.8 mill. (1974)
AUSTRIA	cheese	15.8 mill. (1974)
SWITZERLAND	cheese	8 mill. (1974)
BRAZIL	leather handbags	5.2 mill. (1974)
NORWAY	cheese	10 mill. (1974)
FINLAND	cheese	11.2 mill. (1974)
SWEDEN	cheese	1.5 mill. (1974)
CANADA	fish (2 cases - 1977 and 1978)	approx. <u>85</u> to 200 mill.
EEC	butter cookies	5 mill. (1976)
URUGUAY	leather handbags and non-rubber footwear	13.5 mill. (1976)
URUGUAY	leather apparel	17 mill. (1974)
COLOMBIA	leather handbags	6 mill. (1977)